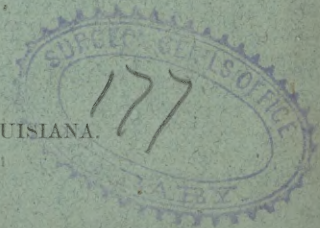


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THE RESPONSIBILITY
—OF—
CRIMINAL LUNATICS.

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The literature growing out of the assassination of President Garfield, during a little more than a year, has attained extraordinary proportions. Quite lately the trial of the assassin Guiteau has evoked small volumes from two medical men,* the one a neurological expert, the other an alienist of more than twenty years' experience. Each one of these writers naturally regards the criminal Guiteau from the standpoint of his own specialty; by the medical standard both pronounce him of unsound mind, and therefore irresponsible positively in a moral sense, and properly in a legal sense, for his crime.

Dr. Beard draws a parallel between the popular excitement of 1692, baseless and perverted to the perpetration of deeds which have made the actors infamous, and that of 1881-2, with fifty millions of people are shocked by an aimless atrocity, and without reflection demand the blood of the murderer. As the victims at Salem were the last who have suffered for the crime of witchcraft, though belief in that delusion is still extensively entertained; so he believes that Guiteau is the last, or nearly the last, criminal lunatic who will suffer the extreme penalty for murderous acts.

Dr. Godding was in attendance on the trial during eight weeks of the ten consumed in reaching the verdict, and witnessed the overwhelming effect of universal horror at the

* *The Psychology of the Salem Witchcraft Excitement of 1692 and its Practical Application to our Own Times.* By George M. Beard, A. M., M. D., Member N. Y. Neurological Society, Author of *Neurasthenia*, etc. 16 mo., pp. 112. N. York: G. P. Putnam's Sons. 1882.

Two Hard Cases: Sketches from a Physician's Portfolio. By W. W. Godding, M. D., Superintendent Govt. Hospital for Insane, Washington, D. C. 16 mo., pp. 257. Boston: Houghton, Mifflin & Co. 1882.

crime, and detestation of the criminal, which blinded spectators and jury alike to the proofs of the wretch's mental unsoundness exhibited by his own actions in their presence. If Dr. Godding had wished to draw a parallel, he might have found suitable material on the spot, in the two most celebrated criminal trials of this country's history, both for the murder of Presidents; in which Mrs. Surratt and Guiteau severally were sacrificed to appease the popular vengeance.

The last assassination illustrates two abuses which superabound in our republican system—office-seeking and liberty of lunatics. The former is a political vice, which is not a proper subject for consideration here; the latter is a suitable study for medical men, but I propose to discuss it now rather as a judicial than a medical question, believing that the solution requires important modification of the legal responsibility of insane malefactors.

While assenting to the idea of Guiteau's mental unsoundness, and that he was a fit subject for a lunatic asylum, I take the ground that his trial, conviction and execution were proper, and even necessary, for the public welfare. This may be paradoxical, in view of the presumed irresponsibility of the insane, but I shall endeavor to demonstrate it as a practical proposition.

It is assumed that the principal object of criminal laws and penalties is the protection of life and property. The idea of vengeance has been eliminated from human codes, in the progress of civilization, though it survives in the divine canon. Penalties are addressed to the criminally disposed, for the purpose chiefly of deterring them from invading the rights of others; and it has been found that their efficiency is in ratio to certainty rather than severity. The criminal class have an extraordinary propensity to gamble on every issue, and will stake even liberty or life, at highly unfavorable odds, for an unlawful object. Certainty of punishment withdraws an offense from the operation of chance. Sudden passion, deliberate revenge or self-preservation might indeed set sure penalties at defiance, but a capital penalty will at least arrest a criminal career. Admitting the insane culprit be not deterred

by penalties from the first offense, its certain punishment retires him from the scene, and the community is relieved of that particular danger.

In any event, I hold that the welfare of the sane members of society is vastly more important than the liberty, or even the life, of a dangerous lunatic.

The proper disposal of the insane is one of the most difficult of social problems, not because experts fail to reach a solution, but because most people resist the practical application of it, when the case is brought to their own door. To have a relative in a mad-house is regarded as a disgrace by people who will tolerate a living torment in their own circle, and witness the annoyance and peril of their neighbors, without realizing that the shame is aggravated by neglect to withdraw it from public gaze. In the same way people falsely reason that the crimes of their relatives reflect no dishonor upon themselves, so long as they go unpunished. The natural consequence of this foolish opposition to the wholesome and lawful restraint of invaders upon personal rights is resort to lynch law for sane criminals, while the insane sometimes lose the immunity that attaches to their infirmity. It is probable, however, that at least three sane persons are acquitted on the "insanity plea" for every insane criminal convicted.

Again, the acquittal of a malefactor on ground of insanity ought to be followed by his permanent retirement to a lunatic asylum; but people have a notion that the temporary insanity of a relative is a smaller disgrace than an incurable case, and their efforts for release, seconded by neighbors who will risk repeated atrocities rather than resist importunities, are too often and too soon successful.

A man who has a dangerous bull or dog, and allows him to run at large, is justly held responsible for consequences, and is not legally excused by promising to put the animal in confinement after acts of destruction. Guiteau had been a nuisance for more than twenty years, and, to say the least, it would have been good economy for the public to support him in an insane asylum. Aside from the various annoyances resulting from

the presence of such persons in society, there is constant danger of outbreak into maniacal fury, with consequences shocking to witness and contemplate.

A vast amount of silly sentimentality is effused on criminals, both sane and insane; as if a few such worthless wretches deserve more consideration than the great mass of well-behaved and respectable people. It is indeed shocking to take the life of a madman, judicially or otherwise; but it is simply bad management to allow a lunatic to commit an act for which a sane person would be punished, and still worse to risk its repetition. Let the unhealthy sentiment which denies society protection from crazy explosions be suppressed; let lunatics be early and positively secluded; and there will be little occasion to plead insanity in a court of justice.

The lax enforcement of legal penalties is the grand mischief of our free institutions. It has grown to an abuse which often provokes its own remedy, by resort to vigilance committees and lynch law; and the acts of lunatics even may incite violent retaliation, as we have seen in the case of Guiteau. However abhorrent to reason and discreditable to our civilization, most people regard it a smaller disgrace for one of their criminal kindred, sane or otherwise, to suffer the extreme penalty extra-judicially than according to terms and forms of law, and this naturally contributes to relaxation of penalties. Thus a habit of lawlessness, tempered only by fear of private vengeance, is disposed to perpetuate itself, through the conservative tendency of mankind to adapt themselves to their environment.

I fully believe that it would conduce both to security of life and property, and to the welfare of the insane, if they were held strictly responsible for their acts, like sane persons. Of the first part of the proposition there can be no reasonable doubt. Beyond withdrawing from the scene those who have committed acts of violence, there can be no doubt that many ill-balanced minds would beware of a sure penalty; and, besides, it would put an effectual stop to cheating justice by false pleading of insanity. Moreover it would lead to the early seclusion of many dangerous lunatics, who are now allowed to

annoy and menace those around them, and would thus afford them the best chance of recovery ; while actually a very large proportion of the incurables owe their hopeless condition to delay of suitable treatment.

I hold that the proper view of the question of the legal responsibility of the insane is from the practical standpoint of utility, and here the liberty, and even the existence, of a lunatic sinks into utter insignificance beside the welfare of society. Utility has settled the question as to inebriates, in most parts of the civilized world, though their temporary loss of self-control is universally admitted ; yet utility might waive the extreme penalty for crimes committed under alcoholic intoxication, provided incarceration could be assured as inflexible and permanent.

Indeed the only necessity for the death penalty at all lies in the uncertainty of all other measures to prevent repetition of the crime by the same individual. It is clear that human weakness and folly, which conspire to discharge malefactors and give them new lease of iniquity, will live about as long as criminal propensities, so that the only safe course with dangerous felons is to destroy them. The alternative, then, is between the judicial method, provided by law, and the various irregular forms of private vengeance, an impromptu mob and a vigilance committee.

It will be said that the execution of an insane criminal might cost a valuable life, for the individual might be restored to reason and a respectable position in society. The answer is, that no community is safe with a person at large who has once been insane and shown homicidal propensities, and the public interest must outweigh individual considerations.

It may be alleged that the restoration of penalties upon the insane is a relapse toward the barbarism of the past. The answer is, that their immunity from punishment is demonstrated a deviation from progress, inasmuch as it practically encourages crime and provokes violent and unlawful retaliation. The right in sociology is the useful, to the whole body or to the greatest portion ; the unattainable may be speculated on by those who have no better occupation than devoutly

wishing. Practical people recognize their environment and act accordingly; what they find safe and tolerably certain, they will choose in preference to what might be praiseworthy under different circumstances.

I conclude, therefore, that the imperfect administration of justice in this country (probably a necessary consequence of our free institutions) renders it unsafe, and therefore unwise, to absolve insane criminals from the usual penalties.

To the legal mind, imbued with the notion that crime necessarily presupposes malicious motive, and that punishment for any except criminal acts, under the above definition, would be an outrage, the foregoing conclusion must appear contrary to precedent, and subversive of justice between man and man. Admitted: but I look not from the legal stand-point, though venerable with age and fortified by innumerable precedents. The broad platform of utility is the proper forum for deciding questions which involve the safety and the elevation of the race. Both these considerations demand either the certain seclusion or the destruction of homicidal monsters, whether sane or insane: actually we find dangerous lunatics abroad in numbers, and we have to look to the dreadful alternative for safety.

Be it understood here that a distinction must be made between moral and legal responsibility, as regards criminal lunatics. Let them be judged hereafter by their moral responsibility as individuals; and we might reasonably suppose that mercy would prevail over vengeance. Human justice is concerned chiefly with the welfare of society, and penalties are contrived to protect the orderly many from the disorderly few. I might admit that society has no moral right to take what it cannot give back—the life of a man; but its imperfect organization demands that a deadly menace, unquestionably proved, be inflexibly and totally suppressed.

In this argument I feel bound to recognize probable results, and apprehend that American juries would very rarely convict manifest lunatics of capital offenses, even though required by both law and evidence. They would be sure then to lower the grade of the crime, as they are very apt to do now,

when the charge is murder in the first degree. Practically the madman would, at the worst, be sentenced to perpetual confinement, and nothing less would ensure the public safety. The real danger of wrong would arise where mental unsoundness is doubtful, and here also juries would be sure to incline to clemency, in the vast majority of cases. The great gain would lie in the fact that it is considerably more difficult to procure the enlargement of a convict than that of a lunatic.

Salus populi suprema lex is the true foundation of human justice. In grave emergencies, like war and civil commotion, when martial law supersedes the civil law, individual rights are eclipsed, and gross personal injustice is sometimes committed. It is like the sacrifice of an injured and innocent limb to save the body.

It is only within the present century that capital punishment has been limited, among the English-speaking portion of the world, to a few of the most atrocious crimes, and it is not unlikely that it may eventually be abolished with safety among the most civilized nations. But this can not be until criminals are convinced that milder penalties will certainly overtake and be inflexibly meted out to the full sentence. In that future we may hope madmen will be dealt with so early, so perseveringly, and withal so successfully, that people will wonder at the mistakes of the present, which allow them to become malefactors.

